

Civil Action No. 5:12-CV-00813-FL

Plaintiff,

NORTH CAROLINA DEPARTMENT  
OF HEALTH AND HUMAN SERVICES.

**FIRST AMENDMENT  
TO COMPLAINT**

**(Jury Trial Requested)**

3a. Defendant actively participated in the EEOC process, and apparently never requested that the case be referred to the Office of Administrative Hearings.

3b. Plaintiff filed a Petition in the Office of Administrative Hearings on May 15, 2013, on the grounds that Defendant failed to reasonably accommodate her, in contravention of N.C. Gen. Stat. § 168-A, the North Carolina Persons with Disabilities Act, and that her dismissal was a discriminatory and retaliatory act in contravention of the same.

7a. Upon information and belief, Defendant has waived its sovereign immunity by its purchase of liability insurance.

<sup>1</sup> Fed. R. Civ. P. 15(a)(1)(A) states: “A party may amend its pleadings once as a matter of course: ... before being served with a responsive pleading; ...” “A motion to dismiss is not a responsive pleading for the purposes of Rule 15(a).” Domino Sugar Corp. v. Sugar Workers Local Union 392, 10 F.3d 1064, 1068 n. 1 (4<sup>th</sup> Cir. 1993). Defendant has filed a motion to dismiss but not an answer.

Respectfully submitted, this the 27<sup>th</sup> day of May, 2013.

/s/ David G. Schiller

David G. Schiller (N.C. Bar No. 26713)

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Counsel for Plaintiff

## **CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that a copy of the foregoing **PLAINTIFF'S FIRST AMENDMENT TO COMPLAINT** on the following counsel via the CM/ECF system:

Ms. Olga Vysotskaya  
N.C. Department of Justice  
Post Office Box 629  
Raleigh, NC 27602

This the 27<sup>th</sup> day of May, 2013.

/s/ David G. Schiller  
David G. Schiller